



Legislative Council

Crimes Amendment (Bushfires) Bill

Hansard - Extract

11/06/2002

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.38 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

All Members will recall the bushfires that ravaged the State in December and January.

The men and women who fought on the frontline: volunteer and professional firefighters; Police; those involved in planning, communications, in catering and in welfare worked together in unforgiving weather conditions.

Many risked their lives.

They were defending thousands of homes and in thousands of cases, they succeeded.

They were stunningly successful.

The volunteer forces that come together at times of significant natural disaster are almost unique to Australia, and in New South Wales we have achieved the highest standards.

The Bill before the House today seeks to emphasise the gravity of the danger that bushfires represent by enacting a specific offence of causing a bushfire.

In introducing this Bill the Government is not seeking to fill a gap in the criminal law, but rather it seeks to emphasise society's abhorrence and condemnation of the deliberate lighting of bushfires by making specific provision against it.

In so doing the Government is further implementing reforms to the criminal law arising out of the Model Criminal Code. The Code has been drawn up by the Model Criminal Code Officers Committee of the Standing Committee of Attorney's General. It is a committee in which this Government has been heavily involved since its inception.

This new offence is yet another example of this Government taking the best options for law reform and adapting them to suit the needs of this State. The Government has previously enacted legislation based on the Model Criminal Code in the areas of computer offences, sabotage, contamination of goods and sexual servitude.

The Bill proposes to insert into the *Crimes Act* 1900 a new offence of causing a bushfire. This offence will be committed if a person intentionally causes a fire and either intends or is reckless as to the spread of that fire to vegetation on any public land or land belonging to another.

This offence is not intended to be a catch-all arson offence. The *Crimes Act* 1900 already contains more than adequate offences of malicious damage to property. Currently, s195(b) of the *Crimes Act* 1900 provides for up to 10 years imprisonment for maliciously damaging property by the use of fire or explosives. A person who recklessly damages property in this way acts maliciously. Under section 196(b) the penalty rises to 14 years if the property is damaged with the intention of injuring a person, and under section 198 a maximum penalty of 25 years imprisonment can be applied to a person who maliciously damages property with the intention of endangering life.

I now turn to the provisions of the Bill. Schedule 1 inserts a new Subdivision 5 entitled 'Bushfires' and this new offence is bushfire specific and it is targeted to catch those persons who intentionally set fire to our bush. Proposed Section 203E(1) establishes the new offence which requires that the person be reckless as to the spread of fire to vegetation. Of course, if buildings or other property are damaged as a result of the spread of such a fire such damage can be taken into account in sentencing. Where appropriate, additional charges may be laid relating to the additional damage.

The penalty for the new offence of causing a bushfire will sit in the middle of the existing range of property damage penalties. The danger to life and property that a bushfire represents in a continent as dry as Australia means that the offence should be seen to be a special aggravated form of damage to property. The Bill therefore will enact a maximum penalty of 14 years imprisonment, placing the offence on a par with the offence of damaging property with the intention of injuring a person.

It should be noted that for the purposes of consistency the Government has chosen to depart from the Model Criminal Code's suggested 15 year maximum penalty to maintain consistency in the application of 14 year imprisonment penalties in the *Crimes Act* 1900.

However, this offence will not require that the person deliberately intends to cause any damage to property or that the person intends the fire to spread. The emphasis in this offence is on recklessness as to the spread of fire to vegetation. The speed at which fire can spread and the need to take immediate preventative action means that it is appropriate for persons to be expected to only light fires in circumstances where they are in a position to control the fire and to prevent it spreading to vegetation.

Recklessness remains a common law term in NSW. It has a number of meanings in different contexts. In this context recklessness will mean that the defendant was aware when intentionally causing a fire that there was a possibility that the fire could spread to vegetation on any public land or land belonging to another in a way that was out of their control.

The definition of the term spread contained in the proposed Section 203D has a special meaning. It is important to note that the offence contemplates recklessness as to the spread of the fire, not any thought as to the extent of damage that such a fire might cause. The aim is to prohibit conduct that creates an unacceptable risk of damage. The offence is therefore aimed at preventing conduct that *might* lead to damage, rather than waiting until the damage has occurred. The offence sends a strong message to those who light fires to be extremely careful. If a fire is carelessly lit, it may be an offence even if the fire is by good luck extinguished before damage occurs.

Accordingly the phrase "spread of the fire" is given a special meaning in the proposed definition in section 203D.

The way in which the fire might spread must be such that it is beyond the capacity of the person who causes it to then extinguish it. Thus it is not an offence under this provision to light a fire with the intention of letting it spread across land provided the person who lit the fire has taken sufficient precautions to ensure that the fire is at all times controlled. Whilst a person in such circumstances may not be guilty of the proposed bushfire offence the person may still be guilty of the lesser offence of malicious damage to property.

The offence also requires that the person causing the fire was aware of the possibility of the fire spreading to property owned by another, regardless of whether that be public or private land. This means that fires lit by landowners on their own land will not fall within the scope of the offence unless there is the possibility that the fire could spread beyond the boundary of their land. On the other hand, a firebug lighting an uncontrolled fire on public land such as a National Park will instantly fall within the scope of the offence.

In some circumstances lighting a fire which may possibly spread to another's land or to public land is clearly for a justified reason such as when firefighters carry out bush fire fighting or hazard reduction operations. In recognition of this, a specific exemption from prosecution for such persons is created by proposed Section 203E(3). This will act to avoid any impression that the new offence might in any way hamper the ability of fire fighters and emergency workers to make quick decisions in emergency situations.

It is important to note that this bushfire offence recognises the fact that innocent people can be caught in dangerous situations involving bushfires. The definition of causing a fire in proposed Section 203D includes failing to contain a fire. However two key exceptions are provided that significantly qualify this position. Under the proposed definition a person does not cause a fire by failing to contain a fire which was lit by another person. Further, a person does not cause a fire by failing to contain a fire which is beyond their control.

This second exception directly envisages a situation such as where a person safely lights a fire such as a barbeque and for some unforeseeable reason the fire becomes beyond the person's control. An example might be an unexpected and freakish sudden strong gale of wind that instantly causes the treetops surrounding the barbeque area to catch fire and that fire is instantly uncontrollable. This person is not guilty of lighting a bushfire and cannot themselves be reasonably expected to put themselves at risk in attempting to contain the fire.

The offence created by this Bill is aimed not to comprehensively re-write the law as it relates to bushfires. Significantly, it will work as a direct complement to the offence currently contained in section 100(1) of the *Rural Fires Act* 1997 being an offence of strict liability. That offence relates to the setting of fires, without lawful authority, and carries a maximum penalty of 5 years imprisonment or a \$110,000 fine. The new section 203E(4) of the *Crimes Act* 1900 as created by this Bill provides that the offence under the *Rural Fires Act* section 100(1) is available as an alternative verdict in a prosecution under the new offence. This will facilitate the complete integration of the new offence into the existing fire related offence structure whilst maintaining the Government's strong position in condemning any person found lighting a dangerous fire of any kind.

The toll exacted against our community due to the recent Christmas and New Year Bushfires will not be forgotten quickly by those directly affected or by those who watched daily their neighbours and friends suffering so greatly. It is inevitable that bushfires will occur in such a hot and dry place as New South Wales—the mission of this Government is take every step possible to prevent their occurrence, their force, their regularity and most importantly their ability to be lit deliberately. This Bill directly confronts, in a

preventative manner, the deliberate lighting of bushfires by imposing a heavy penalty on such illegal acts.

I strongly commend the Bill to the House.